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14 CFR Ch. VI (1–1–06 Edition)

the United States to pay all or part of any of the principal of and interest on a loan issued by a borrower and funded by a lender.

(i) *Financial obligation*, as defined in Section 102(a)(2) of the Act, means any note, bond, debenture, or other debt obligation issued by a borrower in connection with financing under the program.

(j) *Guarantee* means the written agreement between the Board and one or more lenders, pursuant to which the Federal government guarantees repayment of a specified percentage of the principal of and/or interest on the loan. Unless otherwise specified, guarantee includes any other pledge issued under a Federal credit instrument.

(k) *Lender* means any non-Federal qualified institutional buyer, as defined in Section 102(a)(3) of the Act, that funds a financial obligation subject to a guarantee issued by the Board. With respect to a guarantee of a single loan to which more than one lender is a party, the term lender means agent.

(l) *Loan*, unless otherwise specified, includes any financial obligation (i.e., note, bond, debenture, or other debt obligation) issued by a borrower.

(m) *Loan documents* mean the loan agreement and all other instruments, and all documentation between the lender and the borrower evidencing the making, disbursing, securing, collecting, or otherwise administering of the loan. (References to loan documents also include comparable agreements, instruments, and documentation for other financial obligations for which a guarantee is requested or issued.)

(n) *Program* means the air carrier guarantee loan program established by section 101(a)(1) and the related provisions of Title I of the Act.

(o) *Security* means all property, real or personal, required by the provisions of the guarantee or by the loan documents to secure repayment of any indebtedness of the borrower under the loan documents or guarantee.

§ 1300.3 Supplementary regulations of the Air Transportation Stabilization Board.

(a) The regulations in this part are supplemented by the regulations of the Air Transportation Stabilization Board in part 1310 of this chapter in accordance with section 102(c)(2)(B) of the Act.

(b) This part and part 1310 of this chapter jointly govern the application procedures and the requirements for issuance of Federal credit instruments under section 101(a)(1) of the Act.

[67 FR 17258, Apr. 9, 2002]

Subpart B—Minimum Requirements and Application Procedures

§ 1300.10 General standards for Board issuance of Federal credit instruments.

(a) In accordance with section 102(c)(1) of the Act, the Board may enter into agreements with one or more borrowers to issue Federal credit instruments only if the Board determines, in its discretion and in accordance with the minimum requirements set forth in this part, that—

(1) The borrower is an air carrier for which credit is not reasonably available at the time of the transaction;

(2) The intended obligation by the borrower is prudently incurred; and

(3) Such agreement is a necessary part of maintaining a safe, efficient, and viable commercial aviation system in the United States.

(b) In accordance with section 102(c)(2)(A) of the Act, the Board shall enter into an agreement to issue a Federal credit instrument in such form and on such terms and conditions and subject to such covenants, representations, warranties, and requirements (including requirements for audits) as the Board determines are appropriate for satisfying the requirements of this part and any supplemental requirements issued by the Board under section 102(c)(2)(B) of the Act.

(c) In accordance with section 102(d)(1) of the Act, in entering into

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agreements to issue Federal credit instruments, the Board shall, to the extent feasible and practicable and in accordance with the requirements in this part, ensure that the Federal Government is compensated for the risk assumed in making guarantees.

(d) In accordance with Section 102(d)(2) of the Act, the Board is authorized to enter into contracts under which the Federal Government, contingent on the financial success of the air carrier, would participate in the gains of the air carrier or its security holders through the use of such instruments as warrants, stock options, common or preferred stock, or other appropriate equity instruments, except that the Board shall not accept an equity interest in an air carrier that gives the Federal Government voting rights.

(e) In accordance with Section 104(a) of the Act, the Board may only issue a Federal credit instrument to an air carrier after the air carrier enters into a legally binding agreement with the Board regarding certain employee compensation.

§ 1300.11 Eligible borrower.

(a) An eligible borrower must be an air carrier that can demonstrate, to the satisfaction of the Board, that:

(1) It has incurred (or is incurring) losses as a result of the terrorist attacks on the United States that occurred on September 11, 2001, which may include losses due to the unavailability of credit or the decrease in demand for that air carrier's services;

(2) It is not under bankruptcy protection or receivership when the application is submitted or when the Board issues the guarantee, unless the guarantee and the underlying financial obligation is to be part of a bankruptcy court-certified reorganization plan;

(3) It has agreed to permit such audits and reviews prior to the issuance of a guarantee, as the Board may deem appropriate, by an independent auditor acceptable to the Board;

(4) It has agreed to permit such audits and reviews during the period the loan is outstanding and three years after payment in full of the guaranteed loan, as the Board may deem appropriate, by an independent auditor ac-

ceptable to the Board or by the Comptroller General;

(5) In conducting audits and reviews pursuant to paragraphs (a) (3) and (4) of this section, it has agreed to provide access to the officers and employees, books, records, accounts, documents, correspondence, and other information of the borrower, its subsidiaries, affiliates, financial advisers, consultants, and independent certified accountants that the Board or the Comptroller General consider necessary.

(b) Status as an eligible borrower under this section does not ensure that the Board will issue the guarantee sought or preclude the Board from declining to issue a guarantee.

§ 1300.12 Eligible lender.

(a) A lender eligible to receive a Federal credit instrument approved by the Board must be a non-Federal qualified institutional buyer as defined in Section 102(a)(3) of the Act.

(b) If more than one institution participates as a lender in a single loan for which a Federal credit instrument is requested, each one of the institutions on the application must meet the requirements to be an eligible lender. An application for a guarantee of a single loan, for which there is more than one lender, must identify one of the institutions to act as agent for all. This agent is responsible for administering the loan and shall have those duties and responsibilities required of an agent, as set forth in the guarantee.

(c) Each lender, irrespective of any indemnities or other agreements between the lenders and the agent, shall be bound by all actions, and/or failures to act, of the agent. The Board shall be entitled to rely upon such actions and/or failures to act of the agent as binding the lenders.

(d) Status as an eligible lender under this section does not assure that the Board will issue the guarantee sought, or otherwise preclude the Board from declining to issue a guarantee.

§ 1300.13 Guarantee amount.

(a) Under Section 101(a)(1) of the Act, the Board is authorized to enter into agreements to issue Federal credit instruments that, in the aggregate, do not exceed \$10 billion.